



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 29 2014

Return Receipt Requested

Certified Mail#: 7009-2820-0002-1759-0851

In Reply Refer to:

EPA File No.: 03A-14-R6

Frank Pokluda
Precinct 2 Commissioner
Waller County Texas
836 Austin Suite 203
Hempstead, Texas 77445

Re: Rejection of Administrative Complaint No. 03A-14-R6

Dear Mr. Pokluda:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is rejecting administrative complaint No. 03A-14-R6 submitted by (b) (6) - Privacy to the EPA on March 12, 2014. The administrative complaint was filed against the Texas Commission on Environmental Quality (TCEQ) and Frank Pokluda Precinct 2 Commissioner, Waller County Texas. The complaint alleges that the respondents violated Title VI of the Civil Rights Act of 1964, as amended 42 United States Code (U.S.C.) 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulation (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to another Federal agency. 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. *Id.* Third, it must be received within 180 calendar days of the alleged discriminatory act. 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, the EPA financial assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15.

After careful consideration, the OCR is rejecting without prejudice the following allegations for investigation:

Allegation 1

The TCEQ discriminated against African Americans and older residents by inappropriately approved the permit for "Pintail Landfill development, Solid Waste Permit #2377 which comes with the entrance off Highway 6."¹ The approval of the permit "will affect the human health of the residents from Hempstead and the environment."²

Allegation 2

The TCEQ discriminated against African Americans and older residents by inappropriately approved the "Air Quality Standards Permit for concrete batch plant which would result on the release of the following contaminants: particulate matter (10 and 2.5), aggregate, cement, and road dust jeopardizing the health of the residents."³

The OCR will generally dismiss complaints without prejudice if the issues raised in the complaint are the subject of either ongoing administrative permit appeals or litigation in Federal or state court because outcome of such permit appeals or litigation could affect the circumstances surrounding the complaint and any investigation that the OCR may conduct. 65 Fed. Reg. 39673.

On March 20, 2013, the City of Hempstead filed suit against Waller County in state court seeking to enjoin Resolution 2013-001 due to various deficiencies in its construction. This case, City of Hempstead v. Waller County *et al* (Case No. 13-03-21872), is ongoing. Due to the fact that this litigation could affect the circumstances surrounding a potential investigation against the TCEQ, the OCR is rejecting allegations one and two.

After the litigation is completed, the complaint can be re-submitted within sixty (60) calendar days of the conclusion of the suit. However, the OCR may choose not to proceed with a complaint investigation if the allegations in the complaint were actually litigated and substantively decided by a Federal court. 65 Fed. Reg. 39673.

If you have questions regarding this letter, please contact Waleska Nieves-Muñoz of the Office of Civil Rights External Compliance Program at (202) 564-7103, via e-mail

¹ Letter to TCEQ Ms. Bohac, Chief Clerk, from (b) (6) - Privacy Re: Pintail Landfill/Solid Waste Permit #2377 (March 25, 2013)

² *Id.*

³ Letter to (b) (6) - Privacy from (b) (6) - Privacy Re: Sorry I have no up date you as to what is going on (February 2, 2013)

at nieves-munoz.waleska@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Velveta Golightly-Howell
Director

cc: Elise B. Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

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